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May 26, 2004

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20554

Re: WC Dkt. 02-112, Sunset of the BOC Separate Affiliate and Related Requirements

Dear Ms. Dortch,

Attached please find a white paper which responds to arguments raised by AT&T in November 26, 2003 and February 3, 2004 exparte filings in the above-referenced proceeding.

This notice is being filed pursuant to Sec. 1.1206(b)(2) of the Commission's rules. If you have any questions regarding this filing please do not hesitate to contact me.

Sincerely,

Mary L. Henze

Mary L. Henze

cc: M. Carey
W. Dever
M. Carowitz

Joint Provision of
Circuit-Switched Local and Long Distance Service
Is Not a Separate Product Market

The purpose of this White Paper is to address AT&T's claim that bundled local and long distance services should be treated as a distinct product market for purposes of evaluating Bell Operating Companies' ("BOCs") market power. AT&T's claim is inconsistent with antitrust principles and observable market facts: under current market conditions, such service bundles compete not only against other bundles of service, but also against local and long distance services provided separately. On the margin, consumers will evaluate the cost of service bundles against the cost of services offered separately, and a small but significant price increase in the cost of the bundle – assuming that costs of unbundled services stayed the same – would substantially affect consumer demand for the bundled service. AT&T's claim that certain idiosyncratic consumers would prefer to pay more for a bundle of services than for the same services offered separately – for example, because they are very "risk averse" – does not provide a basis for defining a separate market.

AT&T also argues that service bundles can be considered a separate market because a carrier can reap economies of scope in provision of service bundles. But unquantified cost savings in areas like customer acquisition, customer service, and billing do not provide a basis for defining a "cluster market" – if they did, then *any* grouping of related products or services could be considered a separate market, since there will almost always be some economies of scope associated with joint distribution of goods. AT&T does not claim – because it cannot – that there are economies of scope associated with joint production of local and long distance service, since separate facilities (that BOCs typically do not own) are required for provision of long distance service and because BOCs already provide both local exchange service and exchange access functionality when retail long distance service is provided by a separate long distance carrier.

This is not to say that the market for the provision of telecommunications services is not on the verge of a significant restructuring: to cite just one example, the advent of Voice over Internet Protocol ("VoIP") services may well create a new market for broadband services, in which voice service is one application. Broad consumer acceptance of VoIP services will likely substantially eliminate the need to regulate provision of circuit-switched voice services for most consumers. Likewise, wireless services are increasingly substituted for wireline services. Other technological advances may have equally profound impact on the market. Under current market conditions, however, there is no basis for concluding that service bundles of circuit-switched services constitute a distinct market, nor for concluding that any BOC has market power in the provision of long-distance service.

DISCUSSION

In a November 26, 2003, *ex parte* AT&T argued that it would be appropriate to define "bundled mass-market services" as a "separate market" because the availability of "non-bundled *a la carte* services" would not constrain the pricing of service bundles.[1] AT&T's claim is incorrect.

Under the Horizontal Merger Guidelines released by the Department of Justice and the Federal Trade Commission,[2] "[a] market is defined as a product or group of products and a geographic area in which it is produced or sold such that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future producer or seller of those products in that area likely would impose at least a 'small but significant and nontransitory' increase in price, assuming the terms of sale of all other products are held constant. A relevant market is a group of products and a geographic area that is no bigger than necessary to satisfy this test." Merger Guidelines § 1.0. Under this definition, products that are good substitutes for one another are placed in the same market, while products that are not substitutes are in different markets. For this reason, "the rationale for clustering *nonsubstitutable* goods into a single market must be regarded as a severe exception to ordinary market definition criteria, which define markets in terms of substitutability." 2A Phillip E. Areeda, Herbert Hovenkamp, and John Solew, Antitrust Law ¶ 565c, at 337 (2d ed. 2002) (2A Areeda, *et al.*, "*Antitrust Law*") (emphasis added).

In addition, it is important to understand the two separate ways in which the "cluster" market concept has been used in antitrust cases. When a firm has equal market power over more than one good that it provides together, Courts may cluster these "noninterchangeable goods into a single market for administrative purposes." *Id.* at 335. Such a cluster market is not, analytically speaking, a distinct product market, but, because the defendant providing the products in the cluster has effectively the same degree of market power with respect to each, there is no reason to distinguish among the individual products. Accordingly, such clustering is only appropriate if "there [is] no good reason for doubting that the defendant ha[s] the same degree of dominance with respect to all the goods in the cluster." *Id.*; *see also id.* at 332 ("goods cannot be clustered unless there is a sufficient basis for inferring that the defendant has the required degree of market power over each of the goods in the cluster"). That is plainly not the case with respect to local and long distance services provided by BOCs, and AT&T does not argue that it is. Not only do BOCs have a much lower share of the market for long distance services than they do for local service, BOCs generally own the infrastructure for provision of service within a LATA, but they generally provide interLATA long distance service on a resale basis. The Commission therefore cannot plausibly treat local and long distance services as a

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[1] Ex parte letter from Frank S. Simone, AT&T, to Marlene H. Dortch, Federal Communications Commission, Attach. at 1 (Nov. 26, 2003);SBC responded to those arguments in a December 16, 2003, filing; AT&T replied on February 3, 2004. Ex parte letter from Frank S. Simone, AT&T to Marlene H. Dortch, Federal Communicatons Commission, Attach. at 6 (Feb. 3, 2004) ("AT&T Feb. 3 Ex parte")

[2] DOJ & FCC Horizontal Merger Guidelines, *Market Definition, Measurement and Concentration* (Apr. 8, 1997) ("Merger Guidelines"). The Commission commonly relies on the Merger Guidelines in analyzing relevant markets for purposes of determining market power.

bundle or cluster for purposes of assessing BOCs' market power on the basis that BOCs' position in each market is equivalent.

The second situation in which a "cluster" approach may be used is where the joint provision of goods is sufficiently different from the provision of the same goods separately that the availability of separate services will not adequately constrain the pricing of the bundle of services. In theory, this could be true for two reasons. Buyers might, for some reason, so highly value joint provision of goods that they would not consider the separate goods an adequate substitute, and therefore would not switch to the separate goods even if they were cheaper. Or, joint sellers might experience significant economies of scope in the provision of service, and competitors that did not already sell each of the services might face high barriers to entry, such that the joint sellers would have a great cost advantage that sellers of individual goods could not match. In these circumstances, even though joint sellers would face some price competition from sellers of separate services, the availability of separate services would not fully constrain the ability of joint sellers to set prices at or near the monopoly price. *See id.*

AT&T argues that both criteria are satisfied here, but its arguments are wrong. AT&T offers no valid basis to conclude that a bundle of local and long distance service "is significantly different from, and appeals to buyers on a different basis from, the individual products considered separately." *Westman Comm'n Co. v. Hobart Int'l, Inc.*, 796 F.2d 1216, 1221 (10th Cir. 1986). Moreover, AT&T cannot show that there are the combination of scope economies and barriers to entry that would allow a provider of bundled service to raise prices unconstrained by the availability of separate services. Indeed, while the advent of VoIP services will likely require a radical reevaluation of the appropriateness of any price regulation for conventional telephone service in most circumstances, today the offering of bundled services is essentially a marketing strategy that does not affect the underlying market definitions or market power of telecommunications providers.

Before addressing AT&T's argument in greater detail, it should be emphasized that AT&T's claims provide a particularly inappropriate basis for imposing dominant carrier regulation on BOC provision of long distance service. As this Commission has made clear repeatedly, the purpose of dominant carrier regulation is to ensure that a carrier with market power cannot exploit consumers by *raising* prices. *See generally* Order, *Motion of AT&T Corp. To Be Reclassified as a Non-Dominant Carrier*, 11 FCC Rcd 3271, 3346-47, ¶¶ 138-142 (1996) ("*AT&T Non-Dominance Order*"); Second Order on Reconsideration and Memorandum Opinion and Order, *LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area*, 14 FCC Rcd 10771, 10798-99 ¶ 38 (1999) ("the question of whether a carrier should be regulated as dominant depends solely upon whether the carrier has the ability to raise prices by restricting its own output of services. . . . [O]ur goal in classifying carriers as dominant or non-dominant is to protect competition in the relevant market, not particular competitors.") (footnotes and internal quotation marks omitted). AT&T's concern is not for consumers – it is for AT&T's profits. AT&T argues that the Commission should impose regulation because the BOCs will offer service bundles at too *low* a price, and that, as a result, AT&T will be unable to retain or attract as many long distance customers as it would like. Even AT&T itself has recognized the very significant costs that dominant carrier regulation imposes on consumers: such regulation "unfairly advantages . . . competitors and deprives consumers of price reductions and innovative service offerings." *AT&T Non-Dominance Order* at ¶ 16.

Just as important, AT&T's arguments ultimately add no analytical clarity to the regulatory issues before the Commission; to the contrary, AT&T's arguments boil down to the tired and wholly unpersuasive claim that BOCs have an unfair advantage in the provision of long distance service because they own local distribution facilities. AT&T's argument runs counter to the basic animating spirit of the 1996 Act and the effort to open local markets to competition, crowned by nationwide section 271 relief. The purpose of the extraordinary steps that the BOCs have taken to assist their competitors was to ensure that all carriers would be able to compete, free from the type of regulatory hobbling that AT&T continues to advocate. There is no question that AT&T has a fair opportunity to compete in local telecommunications markets; its effort to relitigate that basic issue in this proceeding should fall on deaf ears. But even if AT&T's claims had a sound factual foundation – and they do not – additional Commission regulations already directly address those supposed advantages, and AT&T and other long distance competitors are ideally situated and highly motivated to ensure vigorous enforcement of such regulations.[3] In any event, these supposed advantages are effectively the same whether one defines the market as long distance service or bundled services. Because regulations directly address the supposed source of AT&T's concern, dominant carrier regulation – which is not intended to address such matters, but instead is intended to protect consumers from supracompetitive pricing – would simply hamper competition and harm consumers. For this reason alone, the Commission should reject any such course.

For the sake of simplicity, this discussion narrowly considers the question whether circuit-switched long distance service sold as part of a bundle is in the same market as circuit-switched long distance service sold separately. The answer is yes. There are additional products that also fall within this market – including, most obviously, long distance service provided by wireless companies. The attractiveness of flat-rated long distance service is substantially affected by the availability of unlimited long distance calling over wireless networks on nights and weekends under most calling plans – precisely those times when residential long distance usage is heaviest. Not surprisingly, there has been massive substitution of wireless for wireline long distance service minutes. Other communications services also have an impact on this market; these issues are largely beyond the scope of the discussion here.

I. There Is No Evidence that Consumers Do Not Consider Separate Services an Adequate Substitute for Bundled Services

There is no dispute that, for purposes of defining a market in which a carrier's market power is assessed for regulatory purposes, the Commission applies principles derived from antitrust analysis. In defining the contours of the market, the Commission must look to "the arena within which significant substitution in consumption or production

[3] *See generally, e.g.*, Comments of BellSouth, *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket 02-112 (filed June 30, 2003); Reply Comments of BellSouth *Section 272 (f)(1) Sunset of the BOC Separate Affiliate and Related Requirements*, WC Docket 02-112 (filed July 28, 2003).

occurs." 2A Areeda *et al.*, *Antitrust Law* ¶ 530a, at 180. Thus, products that are "reasonably interchangeable by consumers for the same purposes" belong in the same product market. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 395 (1956).

Retail long distance services offered by AT&T, MCI, Sprint, and others are self-evidently perfect substitutes for long distance services offered by BellSouth and other BOCs. For example, if a consumer in Atlanta wishes to make a long distance call to her grandmother in Peoria, it makes little difference whether the service is provided by AT&T, BellSouth, or someone else. The functionality provided is essentially identical from the consumer's point of view. Moreover, there can be no dispute that local service exists as a separate product distinct from long-distance service: local service is separately tariffed on the state level, and it is available at a discount for resale by competitors. (Indeed, as noted below, any long-distance carrier can produce a local/long-distance bundle simply by reselling the incumbent's local service.)

Accordingly, in deciding whether to purchase long distance service from AT&T, from BellSouth, or from someone else, consumers can be expected to make purchasing decisions almost entirely on the basis of relative cost to the consumer, with the consumer preferring to purchase service (assuming comparable quality of service) at the lower cost. The price charged for such service will almost certainly be the most significant factor in determining "cost" to the consumer, though not the only factor. For example, consumers may value the convenience of a single bill, or they may be motivated by a tie-in between, say, their long distance service plan and a frequent flyer mile program. All of the mentioned factors can be boiled down to dollars and cents: rational consumers will generally purchase long distance service at the lowest available cost for equivalent service. This is particularly true because consumers are accustomed to purchasing local and long distance service from separate providers – something they were required to do for decades. Not surprisingly, whether services are purchased separately or in a package, providers continue to refer to these distinct services in their marketing efforts.

Furthermore, in evaluating the available options, it will not be difficult for consumers to compare the price of long distance service offered as part of a bundle with the price of long distance service offered as a separate service. For example, BellSouth offers long distance service on a minute-of-use basis, with various service plans that generally include a low monthly fee and per-minute charges. Long distance carriers also offer long distance service on a minute-of-use basis, with various service plans. Consumers can directly compare the prices of the various plans, and choose the cheapest one. BellSouth also offers flat-fee long distance service in conjunction with premium local service plans such as Complete Choice®, which includes basic local telephone service and a variety of vertical services. Long distance carriers also offer flat-fee plans. A consumer that preferred only basic local service could readily determine whether the flat-fee plan offered by a long distance company in conjunction with BellSouth's basic service would be cheaper than BellSouth's flat-fee long distance service plus Complete Choice®. Of course, consumers can also compare other carriers' packages of local and long distance services. Common sense suggests and everyday experience confirms that before consumers choose to purchase long distance service from their local telephone company, they can, at least in many cases, be expected to ensure that the choice will save them money as compared with the services sold separately.

There can therefore be no serious dispute that, from the point of view of consumer demand, long distance service, not the service bundle, is the correct market. AT&T's own arguments confirm this point. AT&T argues that SBC (for example) has been pricing its service aggressively "to grow [sic] their long distance shares by reducing prices." AT&T Feb. 3 Ex parte, at 6. But that is precisely the point: BOCs are competing with long distance carriers in what AT&T itself refers to as the "consumer long distance market" (*id.*) by competing to offer cheaper *long distance* service. That competitive strategy reflects a simple reality: if the price of a BOC's long distance service increases, or if competitors' prices decrease, consumers will tend to switch to the competitors' services. There is no reason to believe that consumers will stick with long distance service offered as part of a bundle if they are not getting a better value – based on convenience and price – relative to separate services.

AT&T's contrary arguments do not call this conclusion into question. As an initial matter, AT&T's claim that a bundle of local and long distance services "clearly has an appeal that is distinct from its components" (*id.* at 4) is both unsupported by any empirical data and provides no basis for creating a separate market. To be sure, consumers reasonably place a value on "one-stop shopping," but this is presumably simply one factor to be taken into account in determining the relative price of different combinations of service offerings. Courts have repeatedly rejected the claim that the mere availability of "one-stop" shopping is adequate to justify the creation of a separate market. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1477 (9th Cir. 1997), *aff'd*, 525 U.S. 299 (1999); *Thurman Indust., Inc. v. Pay 'N Pack Stores, Inc.*, 875 F.2d 1369, 1376 (9th Cir. 1989). Moreover, if consumers generally valued "one-stop shopping" for its own sake, one would expect the long distance service that is part of a bundle to be priced higher than long distance service sold separately. But AT&T provides no evidence that this is the case, instead arguing that such service is being promoted at a lower price than AT&T's competing service.

Thus, AT&T is left to claim that certain consumers value flat-rated long distance service because it may be cheaper (if consumers are heavy users of long distance service) or because some consumers are "risk averse." These points only apply to "flat-rated" services, not to "minute-of-use" plans.[4] In any event, however, these arguments simply emphasize that all long distance calling plans are in the *same* market – consumers will compare the various options and choose the one that delivers the greatest value. To be sure, high-volume users will rationally choose flat-rated plans, but, at the same time, high-volume users also impose higher costs on the provider; all carriers must therefore establish a flat rate that will attract users, while ensuring adequate cost recovery. The lower the rate, the more users will find the flat-rated plan attractive. *But whether the flat-rated plan is offered on its own or as part of a bundle presumably plays no role in consumers' calculus.*

At bottom, all of AT&T's arguments depend on the proposition that there will be idiosyncratic consumer preferences for bundled services – for example, consumers with an

[4] Even with regard to flat-rated plans, the point is arguable. Risk-averse consumers may be equally concerned that they will waste money by effectively purchasing "buckets" of minutes that they will fail to use.

irrational desire for "one-stop shopping," or who are peculiarly risk averse; but the existence of such idiosyncratic consumers can never provide a basis for defining a separate market. As Judge Easterbrook recently explained, "[a]ttributes of [consumers] do not identify markets." *Menasha Corp. v. New America Marketing In-Store, Inc.*, 354 F.3d 661 (7th Cir. 2004). "Careful shoppers and other producers protect" buyers who are less careful. *Id.* at 665. AT&T does not even claim that rational consumers will fail to comparison shop among bundled service plans and separate services; those consumers will not assign any greater value to long distance service offered as part of a bundle simply because it *is* part of a bundle.

In sum, AT&T provides no basis for concluding that consumers do not consider long distance service provided separately as an adequate substitute for long distance service offered along with local service. Accordingly, the Commission should conclude that long distance service offered as part of a bundle and long distance service offered on a stand-alone basis are in the same market.

II. Competing Producers of Long Distance Service Constrain BOCs' Long Distance Pricing

Market power is the "ability to raise prices by restricting output." *AT&T Non-Dominance Order*, 11 FCC Rcd at 3276, ¶ 7 (internal quotation marks omitted). BOCs plainly cannot restrict output of long distance service. In general, BOCs provide much or most interstate long distance service on a resale basis; the same carriers that are providing the underlying long distance service also provide service on a retail basis directly to consumers. BOCs cannot restrict output because long-distance carriers need not depend on the BOCs to sell their long-distance service directly to consumers; the long-distance carriers have a direct retail distribution channel.

In arguing that service bundles can nevertheless be considered a separate market, AT&T claims that a hypothetical monopolist in such bundles could restrict output – despite the ability of long-distance carriers to increase output. That claim rests on two necessary propositions: first, that BOCs enjoy substantial economies of scope in providing services jointly; second, that long distance carriers cannot rapidly enter a "bundled service market" in response to supracompetitive prices. Both propositions must be true for AT&T's argument to have any force: if there are no substantial economies of scope in provision of service, BOCs will have no substantial cost advantage and no ability to charge prices substantially above cost in the first place. That is, the provider of the bundle will be constrained by the prices of the services provided separately, including competitive long-distance service; and if competing providers can easily enter the bundled service market, then any ability to charge prices above cost will disappear. In fact, both propositions are false.

First, the type of economies of scope that AT&T identifies – reduced customer acquisition, customer service, and billing costs – are the same type of economies of scope that can be enjoyed whenever more than one related product or service is provided by a single seller. AT&T makes no effort to quantify those savings. Nor does AT&T make any effort to establish that competing long distance service providers do not have other offsetting advantages – for example: freedom from carrier-of-last-resort obligations, the ability to cherry-pick desirable customers and thereby to control costs and maximize per-customer revenue, freedom from local service rate regulation, established market position as providers of long-distance service, customer loyalty, and so on. *Cf.* Report and Order on Remand and Further Notice of Proposed Rulemaking, *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978 (2003), ("*Triennial Review Order*"), vacated in part and remanded, United States Telecom Ass'n v. FCC, Nos. 00-1012 et al., 2004 WL 374262 (D.C. Cir. Mar. 2, 2004) ¶ 86 (noting need to take account of "any countervailing advantages that a requesting carrier may have"). In the absence of any evidence that any cost savings are substantial relative to the overall costs, there is no basis for the claim that local exchange carriers ("LECs") enjoy such substantial cost savings as to require recognition of a separate market.

Second, there is no reason that long-distance providers cannot enter the bundled service market – indeed, they have done so aggressively, with plans like MCI's "Neighborhood" and AT&T's bundled offerings. Because BOC local service is available for resale at a substantial discount, and because long-distance carriers are guaranteed at-cost access to elements of local carriers' network needed to alleviate any impairment that such carriers face in the provision of local exchange service, long-distance carriers can and do quickly enter local service markets. It is not necessary that there actually be any competitors providing bundled services in a particular geographic market. Indeed, to the extent that local residential service is provided below actual cost in many areas, one would not necessarily expect providers to pursue competition in provision of bundled services, since the local residential service market may not be attractive. It is enough that carriers are plainly able to offer competing bundles in response to a significant price increase above cost – in those circumstances, if a provider offered a bundle of services priced above cost, the competitor could enter. Throughout the country, that condition is satisfied – as nationwide section 271 relief attests.

Notably, AT&T does not claim that BOCs gain any cost advantage because the same facilities are used for provision of both local and long distance services. That is because BOCs jointly provide local exchange service and exchange access functionality – either to themselves or in the form of switched exchange access service – over their local facilities whether they provide long distance at retail or not. The only additional service that BOCs provide when they provide long distance service at retail – *i.e.*, interexchange carriage – requires the use of *different* facilities, which BOCs typically do not own. This is therefore not a situation – like that at issue in *United States v. Grinnell Corp.*, 384 U.S. 563 (1966) – where the source of power over price can be said to lie in the control of the facility used to provide all of the services in the bundle.[5] Indeed, even if nonstructural safeguards did not require LECs to impute to themselves the same access charges that unaffiliated long distance carriers pay, LECs would necessarily have to take the opportunity cost of lost access charges into account in determining the cost of providing bundled long distance service.

[5] *Grinnell* involved alarm monitoring services. "While a fire alarm service is not substitutable for a burglar alarm service and while some firms provided only one or a limited number of the various services, the central station offered economies of joint provision that would give a monopolist of the combination a decisive cost advantage over those who offered the services separately." 2A Areeda , *et al.*, *Antitrust Law* ¶ 565c, at 333.

In the end, AT&T is left to argue that BOCs have an advantage because of "discrimination, cost misallocation and price squeezes resulting from BOC control of local bottlenecks." AT&T Feb. 3 *Ex parte*, at 7. The market-opening provisions of the 1996 Act and their implementation by the Commission give the lie to these claims. But, in any event, the Commission has regulations in place to address these issues – including various accounting and other nonstructural safeguards. Defining a market of bundled services does nothing to assist the Commission in determining whether those regulations are needed or effective. Under current market conditions, defining a separate market of bundled services is thus wrong as a matter of antitrust principle and unhelpful as an analytical matter.

III. Market Definitions Will Likely Change with the Advent of VoIP Service

The continued existence of distinct markets for local and long distance service reflects a combination of historical, technical, and regulatory factors. There is nothing inevitable about the way in which these markets developed in the United States. What does seem inevitable is that the communications marketplace is in the midst of a period of profound changes.

The development of VoIP services gives the clearest indication that distinct markets for circuit-switched voice services, on the one hand, and broadband services, on the other, are soon to be a thing of the past. VoIP renders voice service simply a software application provided over a broadband connection – there is no need for any circuit switched connection to the customer to provide such service. The availability of VoIP thus renders broadband service considerably more attractive to a broad group of consumers that have less need for data-only broadband service. With broadband providing a complete substitute for circuit switched voice service in addition to high-speed data capability (not to mention video and other applications), the number of customers migrating away from circuit-switched voice service will undoubtedly increase dramatically, and soon.

Moreover, the nature of the bundles that providers may offer will also continue to evolve. AT&T's argument that bundles of local and long distance services are a distinct market ignores the fact that many additional services are also frequently included in such bundles – not just local and long distance, but wireless service, Internet access service, high-speed data service, video, unified messaging, specially designed and customized web-based user interfaces, and multiple vertical services may be included in various bundles. AT&T itself ran a full-page advertisement in the New York Times on March 29, 2004, advertising a bundle of local, long distance, and Internet access services. It is inconsistent with these facts to claim that a bundle of local and long distance service should be given any special status within the broader telecommunications marketplace.

These factors make AT&T's effort to define a bundled market in circuit-switched local and long distance services particularly ill advised. Not only are its arguments inconsistent with current market facts, but also such a regulatory approach would ignore the most significant and readily foreseeable factor affecting the future development of communications markets. With VoIP and other IP enabled communications services rapidly coming into their own, the possibility that carriers are able to preserve market power by providing circuit-switched service alone is simply untenable. For that reason, as VoIP and other IP enabled communications services take hold, regulators must let go: the extensive regulation of telephone service that exists today will become, in most circumstances, simply unnecessary. Although it is impossible to predict with any certainty what technologies and service configurations will succeed, there is no room for serious dispute that regulatory approaches designed for a circuit-switched world will soon be hopelessly out of date, even assuming for the sake of argument that they are not hopelessly out of date already.

CONCLUSION

The Commission should reject the argument that bundled services constitute a separate relevant market under current market conditions.